

**FILED****BEFORE THE BOARD OF OIL, GAS AND MINING****JUN 12 2013****DEPARTMENT OF NATURAL RESOURCES****SECRETARY, BOARD OF  
OIL, GAS & MINING****STATE OF UTAH**

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**IN THE MATTER OF THE REQUEST )  
FOR AGENCY ACTION OF )  
NEWFIELD PRODUCTION COMPANY )  
FOR AN ORDER POOLING ALL )  
INTERESTS IN THREE DRILLING )  
UNITS ESTABLISHED BY THE )  
BOARD'S ORDERS ENTERED IN )  
CAUSES NOS. 131-51 AND 139-90 IN )  
SECTIONS 2 AND 8, TOWNSHIP 3 )  
SOUTH, RANGE 1 WEST, AND )  
SECTION 21, TOWNSHIP 3 SOUTH, )  
RANGE 2 WEST, U.S.M., DUCHESNE )  
AND UTAH COUNTIES, UTAH )**

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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

**Docket No. 2012-042**

**Cause No. 139-99**

This Cause came on regularly for hearing before the Utah Board of Oil, Gas, and Mining (the "Board") on Thursday, May 30, 2013, at the hour of 9:00 a.m. in the Multipurpose Room of the Uintah Basin Applied Technology College, 1100 East Lagoon Street, Roosevelt, Utah. The following Board members were present and participated at the hearing: James T. Jensen, Chairman, Ruland J. Gill, Jr., Kelley L. Payne, Chris D. Hansen, Carl F. Kendell, Susan Davis, and Michael R. Brown. John R. Baza, Director, was present for the Utah Division of Oil, Gas and Mining (the "Division"). The Board was represented by Michael S. Johnson, Assistant Attorney General.

Petitioner Newfield Production Company ("Newfield") was represented at the hearing by Thomas W. Clawson of Van Cott, Bagley, Cornwall & McCarthy. Objectors Robert C. Bonnet, Gary A. Bonnet, Larry W. Love, and Gary A. Bonnet, as Independent Administrator of the Estate of Stephen K. Bonnet, deceased (collectively, the "Bonnet Parties"), were represented by

Rosemary J. Beless of Fabian & Clendenin. By agreement between counsel, Ms. Beless was excused from attending the hearing in Roosevelt, Utah. The Division was represented at the May 30, 2013 hearing by Steven F. Alder, Assistant Attorney General.

On November 20, 2012, Clark B. Allred of Allred, Brotherson & Harrington, P.C., filed a Response and Objection to Notice of Agency Action on behalf of Robert Bonnet, Gary Bonnet, and Larry Love. On December 3, 2012, Newfield and those certain Bonnet Parties filed a Joint Motion to Continue Portion of Hearing, which was granted the same day by the Board. The Board's Order Continuing Portion of Hearing continued the hearing on that portion of Newfield's Request for Agency Action filed in this Cause (the "Request") involving the pooling of the interests in Section 21, Township 3 South, Range 2 West, U.S.M. ("Section 21"), from the Board's December 5, 2012 hearing to the Board's January 23, 2013 regularly scheduled hearing. The hearing involving pooling the interests in subject Section 21 was subsequently continued a number of times to the Board's regularly scheduled hearing on May 30, 2013.

On January 16, 2013, the Board issued its Findings of Fact, Conclusions of Law, and Order covering the mineral interests in Sections 2 and 8, Township 3 South, Range 1 West, U.S.M., the drilling units comprising the lands other than Section 21 subject to the Request (the "Prior Order").

On or about April 15, 2013, Clark B. Allred filed a Withdrawal of Counsel withdrawing as counsel to the Bonnet Parties, and on April 17, 2013, Rosemary J. Beless filed a Notice of Entry of Appearance appearing on behalf of the Bonnet Parties. On May 30, 2013, Newfield and the Bonnet Parties filed the Stipulation dated May 29, 2013.

No other person or party filed a response to the Request regarding the interests in subject Section 21 and no other person or party appeared at or participated in the May 30, 2013 hearing.

The Board, having fully considered the Stipulation, the evidence proffered and the exhibits received into evidence at the May 30, 2013 hearing, and having taken official notice of the Prior Order, the record in this Cause, and the official well files for the Subject Wells (as defined herein), being fully advised, and good cause appearing, hereby makes the following findings of fact, conclusions of law, and order in this Cause as to the pooling of the interests in the drilling unit comprising Section 21, Township 3 South, Range 2 West, U.S.M. ("Section 21" or the "Subject Lands"):

### **FINDINGS OF FACT**

1. Notices of the time, place, and purposes of the Board's regularly scheduled May 30, 2013 hearing were mailed to all locatable interested parties by first-class mail, postage prepaid, and were duly published in the Salt Lake Tribune, Deseret Morning News, Uintah Basin Standard, and The Vernal Express pursuant to the requirements of Utah Administrative Code ("U.A.C.") Rule R641-106-100. Copies of the Request were mailed to all locatable interested parties pursuant to U.A.C. Rule R641-104-135.
2. Newfield Production Company ("Newfield") is a Texas corporation in good standing, having its principal place of business for its Rocky Mountain operations in Denver, Colorado. Newfield is qualified to do and is doing business in Utah.
3. Under the Order entered on May 9, 2012, in Cause No. 190-90, the Board established a sectional (640-acre or substantial equivalent) drilling unit for the production of oil, gas, and associated hydrocarbons from the Lower Green River and Wasatch formations defined as:

[T]he interval from the top of the Lower Green River formation (TGR<sub>3</sub> marker) to the base of the Green River-Wasatch formations (top of Cretaceous), which base is defined as the stratigraphic equivalent of the Dual Induction Log depths of 16,720 feet in the Shell-Ute 1-18B5 well located in the S½NE¼ of Section 18, Township 2 South, Range 5 West, U.S.M., and 16,970 feet in the Shell-Brotherson 1-11B4 well located in the S½NE¼ of Section 11, Township 2 South, Range 4 West, U.S.M.

for all of subject Section 21. The Order in Cause No. 139-90 authorized up to four producing Lower Green River and Wasatch formation wells, whether all vertical, all horizontal, or a combination of both, upon the drilling unit in subject Section 21, provided that no such well be closer than 1,320 feet from an existing well completed in and producing from the formations and no closer than 660 feet from the drilling unit boundary.

4. The following wells have been drilled into and produce from the Lower Green River and Wasatch formations (the “Subject Wells”):

a. Thorne #4-21-3-2WH Well whose surface location is in the NW¼NW¼ of subject Section 21, and whose bottomhole location is in the SW¼SW¼ of that section. First production occurred on May 27, 2012.

b. Alzada #11-21-3-2W Well located in the NE¼SW¼ of subject Section 21. First production occurred on April 8, 2012.

5. The minerals in subject Section 21 are owned by the Ute Indian Tribe, Ute Distribution Corporation, three Indian allottees, and numerous fee (private) owners, including the Bonnet Parties, as identified in Newfield’s Revised Land Exhibits 3-C.1, 3-C.2, 3-D.1, and 3-D.2. Newfield has leased 93.75 % of the oil and gas minerals in Section 21. All of such leases provide that the lessee may pool the lease with other leases. The only unleased and uncommitted mineral interests in Section 21 are owned by Robert C. Bonnet (0.015625% mineral interest), Gary A.

Bonnet (0.015625% mineral interest), Larry W. Love (0.015625% mineral interest), and Gary A. Bonnet, as Independent Administrator of the Estate of Stephen K. Bonnet (0.015625% mineral interest) as identified in Newfield's Revised Land Exhibits 3-C.2 and 3-D.2.

6. Newfield has unsuccessfully attempted to reach agreement with the Bonnet Parties to either lease their interests or obtain an agreement for such owners to bear their proportionate share of the costs of the Thorne and Alzada Wells.

7. Forced pooling of the Bonnet Parties' interests in the drilling unit comprising the Subject Lands will promote the public interest, increase ultimate recovery, prevent waste, and protect the correlative rights of all owners.

8. The weighted average landowner's royalty prescribed by Utah Code Ann. § 40-6-6.5(6)(a) is 17.81535 % for subject Section 21, as shown in Newfield's Revised Land Exhibits 8-C and 8-D.

9. An interest charge of the Prime Rate plus 2% to be imposed on outstanding costs and expenses is reasonable. The "Prime Rate" is defined as the prime rate reported by Wells Fargo Bank in Salt Lake City, or, if Wells Fargo ceases to exist or to report a prime rate, then the Prime Rate shall be the prime rate reported by a comparable bank operating in the State of Utah.

10. The estimated net plugging and abandoning costs for each Subject Well will be and is \$75,000, based on a 100% working interest ownership.

11. There are no written agreements for the pooling of the Bonnet Parties' interests in the drilling unit comprising the Subject Lands.

12. Pursuant to Utah Code Ann. § 40-6-6.5(2)(c)(ii), Newfield and the Bonnet Parties have stipulated that a particular form of the A.A.P.L. Form 610-1989 Model Form Operating Agreement (JOA), a standard form of operating agreement, contains terms which may be adopted as

part of this forced pooling Order to the extent those terms address issues not expressly addressed in this Order or Utah Code Ann. § 40-6-6.5 and are not inconsistent or in conflict with this Order or Utah Code Ann. § 40-6-6.5. As stipulated by Newfield and the Bonnet Parties, the JOA provides for a reasonable non-consent penalty in the range from 150% to 300%, pursuant to Utah Code Ann. § 40-6-6.5(4)(d)(i)(D).

13. The risks and costs of drilling and completing each Subject Well support the imposition of a risk compensation nonconsent penalty of between 150% and 300%, as stipulated to by Newfield and the Bonnet Parties. Such a nonconsent penalty is just, fair, and appropriate.

14. The Board's vote to approve Newfield's Request was unanimous.

### **CONCLUSIONS OF LAW**

1. Due and regular notice of the time, place, and purposes of the Board's regularly scheduled May 30, 2013 hearing was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board. Due and regular notice of the filing of the Request was given to all interested parties in the form and manner required by law and the rules and regulations of the Board.

2. Pursuant to Sections 40-6-5 and 40-6-6.5 of the Utah Code, the Board has jurisdiction over all of the interested parties and the subject matter of the Request, and has the power and authority to make and issue the order herein set forth.

3. Good cause appears to grant the Request regarding the force pooling of the mineral interests and working interests of the Bonnet Parties in the Lower Green River and Wasatch formations beneath the Subject Lands, as provided herein.

4. Declaring the Subject Wells as the authorized wells for the drilling and spacing units established within the Subject Lands is just and reasonable under the circumstances.

5. Newfield has sustained its burden of proof, demonstrated good cause, and satisfied all legal requirements for granting the Request.

6. Newfield properly served all mineral interest and working interest owners having legally protected interests, and thereby entitled to notice, by mailing copies of the Request to those owners.

7. The Bonnet Parties are “nonconsenting owners,” as that term is defined in Utah Code Ann. § 40-6-2(11) as relating to the applicable Subject Wells.

8. Newfield is the Operator and on behalf of itself is a “consenting owner,” as that term is defined in Utah Code Ann. § 40-6-2(4), as relating to the applicable Subject Wells.

9. A 150% to 300% risk compensation nonconsent penalty, as stipulated to by Newfield and the Bonnet Parties, is appropriate for the Subject Wells.

10. The Request and the evidence received and officially noticed by the Board establish the need for forced pooling upon terms that are just and reasonable.

11. Given the Tribal and Indian allottee owned minerals in the Subject Lands, a communitization agreement is required to create a proration unit in that section conforming to the Order in Cause No. 139-90. An order force pooling the Bonnet Parties’ interests in the drilling unit comprising Section 21 is required in order for Newfield to receive approval of a communitization agreement by the appropriate Federal agency pursuant to Federal regulatory guidelines.

12. Pooling the interests of all consenting owners with the nonconsenting owners in this Cause will promote the public interest, prevent waste of the oil and gas resources, maximize the potential for ultimate production of those resources, and protect the correlative rights of all owners to their just and equitable shares of the pool in the Lower Green River and Wasatch formations.

13. The forced pooling of the Bonnet Parties' interests in the drilling unit comprising subject Section 21 retroactive to April 8, 2012, the date of first production for the Alzada #11-21-3-2W Well, the first Subject Well completed as a producing well in the drilling unit comprising the Subject Lands, under the terms and conditions set forth in this Order, is just and reasonable, and insures all parties will receive their fair and equitable share of production from the Subject Wells.

14. Pursuant to U.A.C. Rule R641-108-204, the Board may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record or other proceedings before the Board, and of technical or scientific facts within the Board's specialized knowledge. Accordingly, the Board is authorized to take official notice of the Prior Order, the record in this Cause, and its official well files regarding the Subject Wells.

### **ORDER**

Based upon the Request, the Stipulation, and the findings of fact and conclusions of law as stated above, it is therefore ordered that:

1. Newfield's Request seeking forced pooling of the Bonnet Parties' mineral interests in the Lower Green River and Wasatch formations beneath the Subject Lands is granted.

2. The Subject Wells as described in Finding of Fact No. 4 herein are hereby designated as the authorized wells for the drilling and spacing unit comprising the Subject Lands established by the Order in Cause No. 139-90.

3. Robert C. Bonnet, Gary A. Bonnet, Larry W. Love, and Gary A. Bonnet, as Independent Administrator of the Estate of Stephen K. Bonnet, deceased, are "Nonconsenting Owners" as such term is defined in Section 40-6-2(11) of the Utah Code.



4. Newfield is a “Consenting Owner” as that term is defined in Section 40-6-2(4) of the Utah Code.

5. Operations incident to the drilling of a designated unit well upon any part of the drilling unit comprising the Subject Lands established by the Board’s Order in Cause No. 139-90 shall be deemed for all purposes to be operations upon each separately owned tract in the drilling unit.

6. The portion of production allocated or applicable to a separately owned tract within the drilling unit comprising the Subject Lands shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on it.

7. The interests of all parties in this Cause subject to the jurisdiction of the Board, specifically including each Nonconsenting Owner, are pooled retroactively to April 8, 2012, the date of first production for the Alzada #11-21-3-2W Well, the first Subject Well completed as a producing well in the drilling unit comprising the Subject Lands.

8. Each owner of an interest within a drilling unit comprising the Subject Lands shall pay his allocated share of the costs incurred in drilling and operating an applicable Subject Well, including, but not limited to, the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, storage facilities, reasonable charges for administration and supervision of operations, and other costs customarily incurred in the industry, the accounting for which shall be governed by the terms of the JOA.

9. Each Nonconsenting Owner’s interest in a Subject Well shall be deemed relinquished to the Consenting Owners in such well during the period of payout for the well as provided in Utah Code Ann. §§ 40-6-6.5(4)(b) and -6.5(8).

10. During such payout period for the Subject Wells, Robert C. Bonnet, Gary A. Bonnet, Larry W. Love, and Gary A. Bonnet, as Independent Administrator of the Estate of Stephen K. Bonnet, deceased, shall receive as a Nonconsenting Owner a 17.81535% royalty as the landowner's royalty attributable to the drilling and spacing unit comprising subject Section 21. The landowner's royalty shall be paid to such Nonconsenting Owners until such time as the applicable Nonconsenting Owners' shares of costs, the Nonconsent Penalty, and applicable interest charges have been fully recouped from the applicable Subject Well, as provided in Utah Code Ann. § 40-6-6.5 and in this Order.

11. Newfield, as Operator of a Subject Well, shall furnish each Nonconsenting Owner owning an interest in the applicable Subject Well with a monthly statement regarding the Subject Well specifying: (i) the costs incurred; (ii) the quantity of oil or gas produced; and (iii) the amount of oil and gas proceeds realized from the sale of the production during the preceding month.

12. Payout occurs when the Consenting Owners who participate in the costs of drilling and completing a Subject Well in a drilling unit recoup from the Nonconsenting Owners the Nonconsenting Owners' share of the costs and expenses of drilling and completing each applicable Subject Well, together with the nonconsent penalty and interest, as provided for herein and under Utah Code Ann. § 40-6-6.5(4)(d).

13. The interest rate as permitted by Utah Code Ann. § 40-6-6.5(4)(d)(iii) is set to the prime rate, as set by Wells Fargo Bank in Salt Lake City, plus 2%, or if Wells Fargo Bank ceases to exist or to report a prime rate, then the prime rate shall be the prime rate reported by a comparable bank operating in the State of Utah.

14. Each applicable Nonconsenting Owner shall pay, out of its share of production, its proportionate share of the net costs of plugging and abandoning each applicable Subject Well, which will be and is \$75,000 per well.

15. In calculating the division of interest for each Nonconsenting Owner, the landowner's royalty shall be proportionately reduced in the ratio that the Nonconsenting Owner's interest bears to (a) the total interest in the tract and (b) further reduced in the ratio that the tract acres bear to the total acreage in the drilling unit.

16. When the Consenting Owners have recovered from the production from a Subject Well the applicable Nonconsenting Owners' share of the costs of locating, drilling, completing and other costs as provided in Utah Code Ann. § 40-6-6.5(4)(d) for the well together with the nonconsent penalty and applicable interest charges as provided herein, the applicable Nonconsenting Owners' relinquished interest shall automatically revert to it, and the Nonconsenting Owner shall from that time forward own the same interest in the pertinent Subject Well and the production from it, and shall be liable for further costs of operation, as if such owner had participated in the initial drilling and completion operations. Costs of operations after payout attributable to a Nonconsenting Owner shall be paid out of production.

17. Under any circumstances where a Nonconsenting Owner has relinquished its share of production to the applicable Consenting Owners or at any time fails to take its share of production in-kind when it is entitled to do so, the Nonconsenting Owner is entitled to an accounting of the oil and gas proceeds applicable to its relinquished share of production; and payment of the oil and gas proceeds applicable to that share of production not taken in-kind, net of cost.

18. The terms of the JOA shall control the relationship of the Consenting Owners and Nonconsenting Owners as to all matters not expressly identified in this Order and Utah Code Ann. § 40-6-6.5 and to the extent they are not inconsistent or in conflict with this Order or Utah Code Ann. § 40-6-6.5. In the event any of the terms of the JOA shall conflict with the terms of this Order or Utah Code Ann. § 40-6-6.5, the terms of the statute or this Order, as applicable, shall control.

19. In the event payout occurs and a subsequent operation (as provided in the JOA) is proposed and conducted, the Bonnet Parties shall be Nonconsenting Owners as provided herein regarding such subsequent operations, and all of the provisions of this Order regarding the resumption of the landowners' royalty for the Nonconsenting Owners, the relinquishment and reversion of the Nonconsenting Owners' interests and recoupment of the costs of such subsequent operations shall apply, pursuant to Utah Code Ann. § 40-6-6.5(4) and (6).

20. Pursuant to U.A.C. Rules R641 and Utah Code Ann. §§ 63G-4-204 to -208, the Board has considered and decided this matter as a formal adjudication.

21. This Findings of Fact, Conclusions of Law, and Order ("Order") is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, all as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208 and U.A.C. Rule R641-109.

22. Notice re Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: The Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order is issued. Utah

Code Ann. §§ 63G-4-401(3)(a) and -403. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63G-4-302, entitled “Agency Review—Reconsideration,” provides:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Administrative Code Rule R641-110-100, which is part of a group of Board rules entitled, “Rehearing and Modification of Existing Orders,” states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Id. See Utah Admin. Code R641-110-200 for the required contents of a petition for rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63G-4-302 and the deadline in Utah

Admin. Code R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

23. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this Order by the Utah Supreme Court.

24. For all purposes, the Chairman's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

DATED this 12<sup>th</sup> day of June, 2013.

STATE OF UTAH  
BOARD OF OIL, GAS AND MINING

By James T. Jensen  
James T. Jensen, Chairman

### CERTIFICATE OF MAILING

I hereby certify that on this 13th day of June, 2013, I caused a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** to be served via E-Mail or U.S. Mail, properly addressed with postage prepaid, upon each of the following:

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